

RECORDATION NO. 9139-A Filed & Recorded

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DEC 28 1977-2 05 AM

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INTERSTATE COMMERCE COMMISSION CRAVATH, SWAIN & MOORE

DEC 28 1977-2 05 AM

ONE CHASE MANHATTAN PLAZA

INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE  
BRUCE BROMLEY  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. deKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT, JR.  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK

GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID O. BROWNWOOD  
PAUL M. ODDYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 620976

TELETYPE: 710-581-0338

TELEX: 125547

RECORDATION NO. 9139-C Filed & Recorded

DEC 28 1977-2 05 AM

INTERSTATE COMMERCE COMMISSION

COUNSEL  
ROSWELL L. GILPATRICK  
CARLYLE E. MAW  
EDWARD S. PINNEY  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
HAROLD R. MEDINA, JR.  
JOHN H. MORSE  
CHARLES R. LINTON  
4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530  
TERMINAL HOUSE  
52, GROSVENOR GARDENS  
LONDON, SW1W 0AU ENGLAND  
TELEPHONE: 01-730-5203  
TELEX: 91784C  
CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON S.W.1.

December 28, 1977

The Chesapeake and Ohio Railway Company  
Lease Financing Dated as of November 1, 1977  
8.20% Conditional Sale Indebtedness  
Due December 1, 1987

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Chesapeake and Ohio Railway Company for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of November 1, 1977, between First Security Bank of Utah, National Association, as Trustee, and Portec, Inc. (Paragon Division);

(b) Agreement and Assignment dated as of November 1, 1977 between Portec, Inc. (Paragon Division) and Mercantile-Safe Deposit and Trust Company, as Agent;

2(a) Lease of Equipment dated as of November 1, 1977, between The Chesapeake and Ohio Railway Company and First Security Bank of Utah, National Association, as Trustee;

(b) Assignment of Lease and Agreement dated as of November 1, 1977, between First Security Bank of Utah, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

7-362A069

DATE DEC 28 1977  
FEE \$ 1.00

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company  
Post Office Box 2258  
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee-Lessor-Vendee:

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111

(3) Builder:

Portec, Inc. (Paragon Division)  
300 Windsor Drive  
Oak Brook, Illinois 60521

(4) Lessee:

The Chesapeake and Ohio Railway Company  
One Charles Center  
Baltimore, Maryland 21201

Please file and record the documents referred to  
in this letter and cross-index them under the names of the  
Agent-Vendor-Assignee, the Trustee-Owner-Trustee-Lessor-Vendee,  
the Builder and the Lessee.

The equipment covered by the aforementioned documents  
consists of the following:

One hundred Auto Racks, Tri-Level, Railpac, bearing  
identifying numbers RP-1130 through RP-1229;

Seventy Auto Racks, Bi-Level, Convertible Shielded,  
bearing identifying numbers RP-1380 through RP-1449;

One hundred Auto Racks, Tri-Level, Railpac, bearing  
identifying numbers RP-1230 through RP-1329; and

Fifty Auto Racks, Bi-Level, Fully enclosed with tri-  
fold doors, bearing identifying numbers RP-1330 through  
RP-1379.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Equipment, and related Assignment of Lease Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*J. Barclay Collins* CFW

J. Barclay Collins  
As Agent for The Chesapeake and  
Ohio Railway Company

Robert L. Oswald, Esq., Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

33

BY HAND

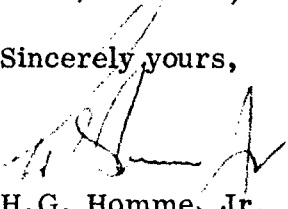
**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**OFFICE OF THE SECRETARY**

Dear J. Barclay Collins:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on December 28, 1977<sup>at</sup> 2:05pm ,  
and assigned recordation number(s) 9139, 9139-A, 9139-B 9139-C

Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

RECORDATION No. 9139 Filed & Recorded

DEC 28 1977 - 2 05 AM

EXECUTED IN 8 COUNTERPARTS  
OF WHICH THIS IS NO. 1

**INTERSTATE COMMERCE COMMISSION**

ASSIGNMENT OF LEASE AND AGREEMENT dated as of November 1, 1977 (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Trustee (hereinafter called the Lessor or the Vendee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, INC., as beneficial owner (hereinafter called the Beneficiary), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting not in its individual capacity but solely as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Beneficiary, the Lessee as hereinafter defined, and the Parties named in Schedule A thereto (hereinafter called the Investors).

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation), with Portec, Inc. (Paragon Division) (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annex thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and The Chesapeake and Ohio Railway Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter

mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include (y) payments by the Lessee to the Lessor pursuant to §§ 6 and 9 of the Lease (except indemnification payments owing to the Vendor pursuant to Articles 6 and 13 of the Security Documentation and except to the extent that the Vendee is obligated to reimburse the Vendor for expenses under Paragraph 6 of this Agreement) and (z) payments made by the Lessee to the Beneficiary pursuant to the last paragraph of Paragraph 9 of the Participation Agreement.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease, subject to the provisions of the Lessee's Consent and Agreement attached hereto (hereinafter called the Consent) permitting certain payments to be made directly to the Vendee. To the extent received, the Vendor will promptly apply such Payments to satisfy the obligations of the Lessor under the Security Documentation then due and payable, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documenta-

tion could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor (or to such other party as may be specified by the Lessor), by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease payable to it as provided in the Consent when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation. The Lessor will furnish to the Vendor and the Lessee a schedule, with such changes as may be appropriate from time to time, setting forth the amounts due the Vendor under the Security Documentation and the Lessor under the Lease on each date for the payment thereof.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor

the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time and at the sole expense of the Lessor, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute,



acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. Subject to the provisions of Article 14 of the Security Documentation, the Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due, but the Lessee shall be under no obligation to any subsequent or successive assignee except upon written notice of such assignment from the Vendor. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Utah.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, unless an Event of Default under the Security Documentation (as defined therein) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to apply the Payments as provided in Paragraph 1 hereof.

12. It is understood and agreed that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, acting in its capacity as Trustee, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon

the said bank as trustee under said Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or on account of any representation, undertaking or agreement of the said bank as Lessor, either expressed or implied, all such personal liability, if any being expressly waived and released by the Builder, the bank acting in its capacity as the Vendor and by all persons claiming by, through or under the Vendor, provided, however, that the Vendor or any person claiming by through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. The Lessor agrees that it will not enter into any amendment or modification of the Trust Agreement except as provided in Article VI, VII and VIII thereof.

13. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, so long as there is no event of default under the Security Documentation. In addition, the Lessor agrees that, without the prior written consent of the Vendor (which shall not be given without the approval of the Investors as provided in Paragraph 10 of the Participation Agreement), the Lessor may not take any action to terminate the Lease, the right to do so being reserved by the Vendor.

14. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart marked Original Counterpart delivered to the Assignee shall be deemed to be the original counterpart and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused

this instrument to be executed, as of the date first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not in its  
individual capacity but solely  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Agent,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

STATE OF UTAH,            )  
                              ) ss.:  
COUNTY OF SALT LAKE,)

On this            day of            197 , before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national bank, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of            197 , before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

The undersigned, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a corporation duly incorporated under the laws of the Commonwealth of Virginia, the Lessee (hereinafter called the Lessee) named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages and other moneys (other than the payments provided for in §§ 6 and 9 of the Lease, except to the extent that the Lessor is obligated to reimburse the Vendor under Articles 6 and 13 of the Security Documentation) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, not in its individual capacity but solely as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, to be applied as provided in the Security Documentation, by wire transfer (or such other method of transfer as shall be acceptable to the Vendor and the Lessee) of Federal or other immediately available funds to the Vendor's address at 2 Hopkins Plaza, Baltimore, Maryland 21201, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the undersigned by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

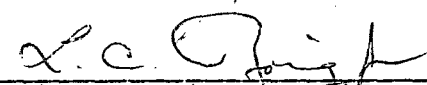
(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Ohio and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of November 1, 1977

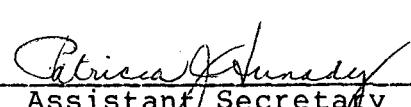
THE CHESAPEAKE AND OHIO RAILWAY  
COMPANY,

by

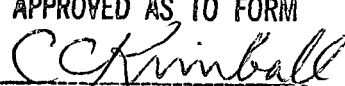
  
Assistant Vice-President  
and Treasurer

[Corporate Seal]

Attest:

  
Assistant Secretary

APPROVED AS TO FORM

  
GENERAL ATTORNEY  
12/19/77

The foregoing Consent and Agreement is hereby  
accepted, as of the 1st day of November 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Agent,

by

Assistant Vice President

[Corporate Seal]

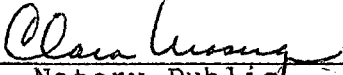
Attest:

Corporate Trust Officer



STATE OF OHIO,            )  
                              )  ss.:  
COUNTY OF CUYAHOGA,)

On this 19TH day of DECEMBER 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires **CLARA MASUGA, Notary Public**  
State of Ohio - Cuyahoga County  
My Commission Expires April 21, 1979

ASSIGNMENT OF LEASE AND AGREEMENT dated as of November 1, 1977 (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Trustee (hereinafter called the Lessor or the Vendee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, INC., as beneficial owner (hereinafter called the Beneficiary), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting not in its individual capacity but solely as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Beneficiary, the Lessee as hereinafter defined, and the Parties named in Schedule A thereto (hereinafter called the Investors).

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation), with Portec, Inc. (Paragon Division) (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annex thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and The Chesapeake and Ohio Railway Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter

tion could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor (or to such other party as may be specified by the Lessor), by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease payable to it as provided in the Consent when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation. The Lessor will furnish to the Vendor and the Lessee a schedule, with such changes as may be appropriate from time to time, setting forth the amounts due the Vendor under the Security Documentation and the Lessor under the Lease on each date for the payment thereof.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor

the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time and at the sole expense of the Lessor, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute,

acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. Subject to the provisions of Article 14 of the Security Documentation, the Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due, but the Lessee shall be under no obligation to any subsequent or successive assignee except upon written notice of such assignment from the Vendor. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Utah.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, unless an Event of Default under the Security Documentation (as defined therein) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to apply the Payments as provided in Paragraph 1 hereof.

12. It is understood and agreed that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, acting in its capacity as Trustee, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Assignment is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon

the said bank as trustee under said Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or on account of any representation, undertaking or agreement of the said bank as Lessor, either expressed or implied, all such personal liability, if any being expressly waived and released by the Builder, the bank acting in its capacity as the Vendor and by all persons claiming by, through or under the Vendor, provided, however, that the Vendor or any person claiming by through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. The Lessor agrees that it will not enter into any amendment or modification of the Trust Agreement except as provided in Article VI, VII and VIII thereof.

13. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, so long as there is no event of default under the Security Documentation. In addition, the Lessor agrees that, without the prior written consent of the Vendor (which shall not be given without the approval of the Investors as provided in Paragraph 10 of the Participation Agreement), the Lessor may not take any action to terminate the Lease, the right to do so being reserved by the Vendor.

14. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart marked Original Counterpart delivered to the Assignee shall be deemed to be the original counterpart and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused

this instrument to be executed, as of the date first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not in its  
individual capacity but solely  
as Trustee as aforesaid,

by

Authorized Officer

[Seal]

Attest:

Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Agent,

by

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer



STATE OF UTAH,                    )  
                                      )    ss.:  
COUNTY OF SALT LAKE,)

On this 20<sup>th</sup> day of December 1977, before me personally appeared **DEBRA J. DORFMAN**, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national bank, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

*Venna L. Quetawke*  
Notary Public  
My Commission Expires November 15, 1981

[Notarial Seal]

My Commission expires





STATE OF MARYLAND, )  
 ) SS.:  
CITY OF BALTIMORE, )

On this 21<sup>st</sup> day of December 1977, before me personally appeared G. J. Johnston, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[Notarial Seal]

My Commission expires

RUSSELL E. SCHREIBER  
NOTARY PUBLIC  
My Commission Expires July 1, 1978

## CONSENT AND AGREEMENT

The undersigned, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a corporation duly incorporated under the laws of the Commonwealth of Virginia, the Lessee (hereinafter called the Lessee) named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages and other moneys (other than the payments provided for in §§ 6 and 9 of the Lease, except to the extent that the Lessor is obligated to reimburse the Vendor under Articles 6 and 13 of the Security Documentation) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, not in its individual capacity but solely as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, to be applied as provided in the Security Documentation, by wire transfer (or such other method of transfer as shall be acceptable to the Vendor and the Lessee) of Federal or other immediately available funds to the Vendor's address at 2 Hopkins Plaza, Baltimore, Maryland 21201, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the undersigned by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Ohio and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of November 1, 1977

THE CHESAPEAKE AND OHIO RAILWAY  
COMPANY,

by

\_\_\_\_\_  
Assistant Vice-President  
and Treasurer

[Corporate Seal]

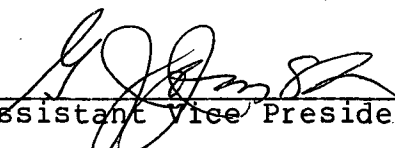
Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby  
accepted, as of the 1st day of November 1977.

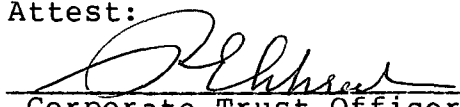
MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Agent,

by

  
Assistant Vice President

[Corporate Seal]

Attest:

  
Corporate Trust Officer

STATE OF OHIO,       )  
                              ) ss.:  
COUNTY OF CUYAHOGA,)

On this        day of        197 , before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires